1116.

SUPREME COURT OF THE UNITED STATES.

No. 171.

MOSES WANZER, PLAINTIFF IN ERROR,

vs.

TUPPER AND ROLLINS.

IN ERROR TO THE CIRCUIT COURT U. S., FOR THE SOUTHERN DISTRICT OF ~~N. YORK~~ Mississippi.

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J. & G. S. Gideon, printers.

George L. Potter being duly sworn, states that he is one of the firm of Van Winkle & Potter, attorneys at law, practising as partners under that name, and resident at Jackson, in the State of Mississippi. That as such attorneys, his said firm instituted, on behalf of the plaintiff, the suit set forth in the annexed transcript of a record, wherein Moses Wanzer is plaintiff, and Tupper & Rollins are defendants, and conducted the same in the circuit court of the United States, for the southern district of Mississippi. That on the day of the date of the writ of error bond set forth in said transcript, to wit, on the 17th day of November, A. D. 1846, he requested the acting deputy of the clerk of said court to make out a transcript of the record in said cause, for the Supreme Court of the United States, and to issue a writ of error in said cause as soon as possible. That the said deputy then informed affiant that the same should be done so soon as the business of the office of the clerk of said circuit court would permit. Affiant has since then several times repeated said request to said deputy, but was not able to obtain a transcript of said record, until this the 24th day of December, A. D. 1846. And further, affiant states, that he is informed by said clerk and his said deputy, that the making up the record in said cause, and the making a transcript of said record, were and had been prevented and delayed by reason of other business, in and pertaining to the office of said clerk, which said clerk and his deputy had been called upon and required to perform.

Affiant has acted as the attorney and agent of said Wanzer, in ordering and procuring said transcript, and the delay in obtaining and transmitting the same to be filed in said Supreme Court has not been caused by design or neglect on the part of affiant or of said Wanzer.

GEORGE L. POTTER.

Sworn to and subscribed before me, at said Jackson, December 24th, 1846. L. V. DIXON, *Commissioner*
U. S. circuit court, southern district Miss.

UNITED STATES OF AMERICA,
Southern district of Mississippi, circuit court, U. S.

I, William H. Brown, clerk of said court, do hereby certify, that L. V. Dixon, whose name is affixed to the foregoing affidavit, is a commissioner duly appointed by said circuit court on the 28th day of November, A. D. 1839.

In testimony whereof, I have hereunto set my hand and affixed the [L. S.] seal of said court, at Jackson, this 24th day of Dec., A. D. 1846.

W. H. BROWN, *Clerk.*

UNITED STATES OF AMERICA, *ss:*

The President of the United States, to the judges of the circuit court of the United States, for the southern district of Mississippi, greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said circuit court, before you, or

some of you, between Moses Wanzer, plaintiff, and Tullius C. Tupper and John H. Rollins, under the firm of Tupper & Rollins, defendants, a manifest error hath happened, to the great damage of the said plaintiff, as by his complaint appears; we being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in his behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the first Monday of December next, in the said Supreme Court to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein, to correct that error, what of right, and according to the law and custom of the United States, should be done.

Witness the honorable Roger B. Taney, chief justice of the said Supreme Court, the first Monday of December, in the year of our Lord one thousand eight hundred and forty-five, and of the independence of the United States the 70th.

Issued the 24th day of November, 1846.

W. H. BROWN, *Clerk*
Circuit court, U. S., southern district Mississippi.

UNITED STATES OF AMERICA, *ss:*

To Tullius C. Tupper and John H. Rollins, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be held at Washington, on the first Monday in December next, pursuant to a writ of error, filed in the clerk's office of the circuit court of the United States, for the ninth circuit and southern district of Mississippi, wherein Moses Wanzer is plaintiff, and you are defendants in error, to shew cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected, and speedy justice should not be done to the parties in that behalf.

Witness the honorable Samuel J. Gholson, one of the judges of the circuit court of the United States, for the southern district of Mississippi, this 24th day of November, in the year of Lord one thousand eight hundred and forty-six, and in the 71st year of the independence of the United States.

S. J. GHOLSON.

Executed on Daniel Mayes and C. R. Clifton, (Mayes & Clifton,) attorneys of record for defendants Tupper & Rollins, this 9th day of December, 1846.

THOMAS FLETCHER, *Marshal*,
Per RICHARD FLETCHER, *D. Marshal.*

MOSES WANZER,
vs.
TUPPER & ROLLINS.

Pleas before the honorable Samuel J. Gholson, district judge of the United States, at a circuit court of the United States, held at the town of Jackson, in and for the ninth circuit and southern district of Mississippi, at the November term, in the year of our Lord one thousand eight hundred and forty-six.

Be it remembered, that heretofore, to wit, on the third day of October, A. D. one thousand eight hundred and forty-three, came Moses Wanzer, by his attorneys, Van Winkle & Potter, in the clerk's office of the said court, and filed his declaration herein against Tullius C. Tupper and John H. Rollins, late partners under the firm of Tupper and Rollins, which declaration is in the words and figures following, to wit:

UNITED STATES OF AMERICA,
Southern district of Mississippi, ss:

In the circuit court thereof, to November term, A. D. 1843.

1st. Moses Wanzer, a citizen of the State of New York, complains of Tullius C. Tupper and John H. Rollins, late partners under the firm name of Tupper & Rollins, citizens of the State of Mississippi, residing in the southern district thereof, summoned, &c., of a plea of trespass on the case upon promises, for that one Moses Wanzer, for the purpose hereinafter mentioned, heretofore, to wit, on the thirteenth day of April, in the year of our Lord one thousand eight hundred thirty-nine, at Canton, to wit, at the district aforesaid, by one E. C. Estes, his attorney (attorney meaning,) made his certain bill of exchange in writing, bearing date the day and year aforesaid, and then and there directed the said bill of exchange to Messrs. J. Silverbery & Co., Canton, Mississippi, and thereby then and there requested the said J. Silverbery & Co., on the first of June, 1840, after date of that first of exchange, second and third of the same tenor and date unpaid, to pay to the order of Messrs. Searles and Vanderhurst, twenty-six hundred and seventy-six $\frac{11}{100}$ dollars at branch of the Commercial Bank of Natchez, at Canton, value received, and to place the same to account as advised; and on the day and year first aforesaid, at said Canton, to wit, at the district aforesaid, delivered the said bill of exchange to the said Searles & Vanderhurst, which said bill of exchange the said J. Silverbery & Co., in liquidation by Charles J. Searles, surviving partner, afterward, to wit, on the said 13th day of April, in the year of our Lord one thousand eight hundred and thirty-nine, at said Canton, Mississippi, to wit, at the district aforesaid, upon sight thereof, in writing accepted, and the said Searles and Vanderhurst, to whose order the payment of the said sum of money in the said bill of exchange specified was by the same to be made, afterwards, to wit, on the day and year first aforesaid, at the district aforesaid, endorsed and delivered the said bill of exchange to the said

defendants, who then and there, by their said firm name of Tupper and Rollins, duly endorsed and delivered the same to the said plaintiff; and the said plaintiff avers, that the said bill was so drawn, and accepted, and endorsed as aforesaid, for the purpose that it should then and there be delivered to, and received by, the said plaintiff, in payment of a certain claim then and there had and held by the said plaintiff against the said J. Silverbery & Co., and for no other purpose or consideration whatever; and also that the said bill so drawn, accepted, and endorsed as aforesaid, was so as aforesaid delivered to, and was then and there duly received by the said plaintiff, in payment of the said claim. And the said plaintiff avers, that afterwards, to wit, on the fourth day of June, in the year of our Lord one thousand eight hundred and forty, when the said bill of exchange became due and payable, according to the tenor and effect thereof, at said Canton, Mississippi, to wit, at the district aforesaid, the said bill of exchange was duly presented and shown to and at the said branch of the Commercial Bank of Natchez, at Canton, and payment of the said sum of money therein specified was then and there duly required and demanded, according to the tenor and effect of the said bill of exchange; but that neither the said branch of the Commercial Bank of Nachez, at Canton, nor the said J. Silverbery & Co., nor any other person for or on their account, did or would, at that or any other time, either before or since, pay the said sum of money in the said bill of exchange specified, or any part thereof, to the said plaintiff. And thereupon, afterwards, to wit, on the day and year last aforesaid, at said Canton, to wit, at the district aforesaid, the said bill of exchange was duly protested for non-payment thereof; of all which said several premises, the said defendants, afterwards, to wit, on the day and year last aforesaid, at said Canton, to wit, at the district aforesaid, had due notice.

By means whereof the said defendants became then and there liable to pay the said plaintiff the said sum of money in the said bill of exchange specified, when they, the said defendants, should be thereunto afterwards requested; and, being so liable, the said defendants, in consideration thereof, afterwards, to wit, on the day and year last aforesaid, at the district aforesaid, undertook and then and there promised the said plaintiff to pay him the said sum of money in the said bill of exchange specified, when they, the said defendants, should be thereunto afterwards requested.

2nd. And also for this, that one Moses Wanzer, for the purpose herein after mentioned, heretofore, to wit, on the thirteenth day of April, in the year of our Lord one thousand eight hundred and thirty-nine, at Canton, to wit, at the district aforesaid, by one E. C. Estes, his att'y, (attorney meaning,) made another certain bill of exchange in writing, bearing date the day and year last aforesaid, and then and there directed the said last mentioned bill of exchange to Mess. J. Silverbery & Co., Canton, Miss., and thereby then and there requested the said J. Silverbery & Co., on the first of June, 1840, after date of that first exchange, second and third of the same tenor and date unpaid, to pay to the order

of Messrs. Searles & Vanderhurst twenty-six hundred and seventy-six $\frac{11}{100}$ dollars, at the branch of the Commercial Bank of Natchez, at Canton, value received, and to place the same to account as advised; and on the said 13th day of April, A. D. 1839, at said Canton, to wit, at the district aforesaid, delivered the said last mentioned bill of exchange to the said Searles and Vanderhurst, which said last mentioned bill of exchange the said J. Silverbery & Co., in liquidation by Charles J. Searles, surviving partner, afterwards, to wit, on the said 13th day of April, in the year of our Lord one thousand eight hundred and thirty-nine, at said Canton, Mississippi, to wit, at the district aforesaid, upon sight thereof, in writing accepted; and the said Searles and Vanderhurst, to whose order the payment of the said sum of money in the said bill of exchange specified was by the same to be made, afterwards, to wit, on the day and now last year aforesaid at the district aforesaid, endorsed and delivered the said last mentioned bill of exchange to the said defendants, who then and there, by their said firm name of Tupper and Rollins, duly endorsed and delivered the same to the said plaintiff.

And the said plaintiff avers, that the said bill was so drawn, and accepted, and endorsed as aforesaid, for the purpose that it should then and there be delivered to, and received by, the said plaintiff in payment of a certain other claim then and there had and held by the said plaintiff, against the said J. Silverbery & Co., and for no other purpose or consideration whatever; and also, that the said bill, so drawn, accepted, and endorsed as aforesaid, was so as aforesaid delivered to, and was then and there duly received by, the said plaintiff in payment of the said claim. And the said plaintiff avers that afterwards, to wit, on the fourth day of June, in the year of our Lord one thousand eight hundred and forty, when the said last mentioned bill of exchange became due and payable, according to the tenor and effect thereof, at said Canton, Mississippi, to wit, at the district aforesaid, the said last mentioned bill of exchange was duly presented and shown to and at the said branch of the Commercial Bank of Natchez, at Canton, and payment of the said sum of money therein specified was then and there duly required and demanded, according to the tenor and effect of the said last mentioned bill of exchange; but that neither the said branch of the Commercial Bank of Natchez, at Canton, nor the said J. Silverbery & Co., nor any other person, for or on their account, did or would, at that or any other time, either before or since, pay the said sum of money in the said last mentioned bill of exchange specified, or any part thereof, to the said plaintiff. And thereupon, afterwards, to wit, on the day and year last aforesaid, at said Canton, Mississippi, to wit, at the district aforesaid, the said last mentioned bill of exchange was duly protested for non-payment thereof.

And the said plaintiff avers, that at the said time when the said defendants so endorsed the said last mentioned bill of exchange as aforesaid, to wit, on the said 13th day of April, in the year of our Lord 1839, at the district aforesaid, the said defendants were fully indemnified by the said Searles and Vanderhurst for their said endorsement of the said last

mentioned bill of exchange; for and in consideration whereof, they, the said defendants, did so endorse the said last mentioned bill of exchange as aforesaid. By means whereof, they, the said defendants, afterwards, to wit, on the said fourth day of June, A. D. 1840, at the district aforesaid, became liable to pay the said plaintiff the said sum of money in the said last mentioned bill of exchange specified, when they, the said defendants should be thereunto afterwards requested; and, being so liable, the said defendants, in consideration thereof, afterwards, to wit, on the day and year last aforesaid, at the district aforesaid, undertook and then and there promised the said plaintiff to pay him the said sum of money in the said last mentioned bill of exchange specified, when they, the said defendants, should be thereunto afterwards requested.

3rd. And also, for that one Moses Wanzer, for the purpose hereinafter mentioned, heretofore to wit, on the thirteenth day of April, in the year of our Lord one thousand eight hundred and thirty-nine, at Canton, to wit, at the district aforesaid, by one E. C. Estes, his att'y, (attorney meaning,) made his certain other bill of exchange in writing, bearing date the day and year aforesaid, and then and there directed the said bill of exchange, in this count mentioned, to Messrs. J. Silverbery & Co., Canton, Miss.; and thereby, then and there, requested the said J. Silverbery & Co., on the first day of June, 1840, after date of that first of exchange, second and third of the same tenor and date unpaid, to pay to the order of Messrs. Searles and Vanderhurst, twenty-six hundred and seventy-six $\frac{11}{100}$ dollars, at the branch of the Commercial Bank of Natchez, at Canton, value received, and to place the same to account as advised; and on the said 13th day of April, 1839, at said Canton, to wit, at the district aforesaid, delivered the said bill of exchange, in this count mentioned, to the said Searles and Vanderhurst; which said bill of exchange, in this count mentioned, the said J. Silverbery & Co., in liquidation, by Chas. J. Searles, surviving partner, afterwards, to wit, on the said 13th day of April, in the year of our Lord one thousand eight hundred and thirty-nine, at said Canton, Miss., to wit, at the district aforesaid, upon sight thereof, in writing, accepted; and the said Searles & Vanderhurst, to whose order the payment of the said sum of money in the said bill of exchange, in this count mentioned, specified, was by the same to be made, afterwards, to wit, on the day and year now last aforesaid, at the district aforesaid, endorsed and delivered the said bill of exchange, in this count mentioned, to the said defendants, who then and there, by their said firm name of Tupper & Rollins, duly endorsed and delivered the same to the said plaintiff; and the said plaintiff avers, that afterwards, to wit, on the fourth day of June, in the year of our Lord one thousand eight hundred and forty, when the said bill of exchange, in this count mentioned, became due and payable, according to the tenor and effect thereof, at said Canton, Miss., to wit, at the district aforesaid, the said bill of exchange, in this count mentioned, was duly presented and shown to and at the said branch of the Commercial Bank of Natchez, at Canton, and payment of the said sum of money therein specified was then and there duly re-

quired and demanded, according to the tenor and effect of the said bill of exchange in this count mentioned; but that neither the said branch of Commercial Bank of Natchez, at Canton, nor the said J. Silverbery & Co., nor any other person, for or on their account did or would at that or any other time, either before or since, pay the said sum of money in the said bill of exchange, in this count mentioned, specified, or any part thereof, to the said plaintiff; and thereupon, afterwards, to wit, on the day and year last aforesaid, at said Canton, Miss., to wit, at the district aforesaid, the said bill of exchange, in this count mentioned, was duly protested for non-payment thereof; and the said plaintiff avers, that on the 13th day of April, A. D. 1839, aforesaid, to wit, at the district aforesaid, the said defendants were fully indemnified against any loss or damage they, the said defendants, might sustain from the failure of payment at maturity of the said bill of exchange in this count mentioned; and further, that the said bill was so drawn, and accepted, and endorsed as aforesaid, for the purpose that it should then and there be delivered to, and received by, the said plaintiff, in payment of a certain other claim then and there had and held by the said plaintiff against the said J. Silverbery & Co., and for no other purpose or consideration whatever; and also that the said bill, so drawn, accepted, and endorsed as aforesaid, was so as aforesaid delivered to, and was then and there duly received by, the said plaintiff in payment of the said claim. By means whereof, the said defendants became then and there liable to pay the said plaintiff the said sum of money in the said bill of exchange specified, when they, the said defendants, should be thereunto afterwards requested; and being so liable, the said defendants, in consideration thereof, afterwards, to wit, on the day and year last aforesaid, at the district aforesaid, undertook, and then and there promised the said plaintiff, to pay him the said sum of money in the said bill of exchange specified, when they, the said defendants, should be thereunto afterwards requested.

4th. And also for that one Moses Wanzer, for the purposes hereinafter mentioned, heretofore, to wit, on the thirteenth day of April, in the year of our Lord one thousand eight hundred and thirty-nine, at Canton, to wit, at the district aforesaid, by E. C. Estes, his att'y, (attorney meaning,) made another certain bill of exchange in writing, bearing date the day and year aforesaid, and then and there directed the said bill of exchange, in this count mentioned, to Messrs. J. Silverbery & Co., Canton, Miss.; and thereby then and there requested the said J. Silverbery & Co., on the first of June, 1844, after date of that first of exchange, second and third of the same tenor and date unpaid, to pay to the order of Messrs. Searles & Vanderhurst twenty-six hundred and seventy-six $\frac{11}{100}$ dollars, at the Branch of the Commercial Bank of Natchez, at Canton, value received, and to place the same to account as advised; and on the said thirteenth day of April, 1839, at said Canton, to wit, at the district aforesaid, delivered the said bill of exchange, in this count mentioned, to the said Searles & Vanderhurst; which said bill of exchange, in this count mentioned, the said Silver-

bery & Co., in liquidation, by Chas. J. Searles, surviving partner, afterwards, to wit, on the said 13th day of April, in the year of our Lord one thousand eight hundred and thirty-nine, at said Canton, Miss., to wit, at the district aforesaid, upon sight thereof, in writing, accepted; and the said Searles & Vanderhurst, to whose order the payment of the said sum of money in the said bill of exchange, in this count mentioned, specified, was by the same to be made, afterwards, to wit, on the day and year now last aforesaid, at the district aforesaid, endorsed and delivered the said bill of exchange, in this count mentioned, to the said defendants, who then and there, by their said firm name of Tupper & Rollins, duly endorsed and delivered the same to the said plaintiff; and the said plaintiff avers, that the said bill was so drawn, and accepted, and endorsed as aforesaid, for the purpose that it should then and there be delivered to and received by said plaintiff in payment of a certain other claim then and there had and held by the said plaintiff against the said J. Silverbery & Co., and for no other purpose or consideration whatever; and also that the said bill so drawn, accepted, and endorsed as aforesaid, was so as aforesaid delivered to, and was then and there duly received by, the said plaintiff in payment of the said claim. And the said plaintiff avers, that afterwards, to wit, on the fourth day of June, in the year of our Lord one thousand eight hundred and forty, when the said bill of exchange in this count mentioned became due and payable, according to the tenor and effect thereof, at said Canton, Mississippi, to wit, at the district aforesaid, the said bill of exchange in this count mentioned was duly presented and shewn to and at the said branch of the Commercial Bank of Natchez, at Canton, and payment of the said sum of money therein specified was then and there duly required and demanded, according to the tenor and effect of the said bill of exchange in this count mentioned; but that neither the said branch of the Commercial Bank of Natchez, at Canton, nor the said J. Silverbery & Co., nor any other person for or on their account, did or would at that or any other time, either before or since, pay the said sums of money in the said bill of exchange in this count mentioned specified, or any part thereof, to the said plaintiff. And thereupon, afterwards, to wit, on the day and year last aforesaid, at said Canton, Mississippi, to wit, at the district aforesaid, the said bill of exchange in this count mentioned was duly protested for non-payment thereof. And the said plaintiff avers, that at the said time when the said defendants so endorsed the said last mentioned bill of exchange as aforesaid, to wit, on the said 13th day of April, in the year of our Lord 1839, at the district aforesaid, the said defendants were fully indemnified by the said J. Silverbery & Co., for their said endorsement of said last mentioned bill of exchange; for and in consideration whereof they, the said defendants, did so endorse the said last mentioned bill of exchange as aforesaid; by means whereof, they, the said defendants, afterwards, to wit, on the said fourth day of June, A. D. 1840, at the district aforesaid, became liable to pay to the said plaintiff the said sum of money in the said now last mentioned bill

of exchange specified, when they, the said defendants, should be thereunto afterwards requested; and being so liable, the said defendants, in consideration thereof, afterwards, to wit, on the day and year last aforesaid, at the district aforesaid, undertook, and then and there promised the said plaintiff to pay him the said sums of money in the said last mentioned bill of exchange specified, when they, the said defendants, should be thereunto afterwards requested.

5th. And for that also, heretofore, to wit, on the 13th day of April, in the year of our Lord one thousand eight hundred and thirty-nine, at Canton, to wit, at the district aforesaid, J. Silverbery & Co. were indebted to the said plaintiff in a large sum of money, to wit, the sum of twenty-six hundred and seventy-six $\frac{1}{100}$ dollars; and the said plaintiff thereafter, to wit, on the day and year aforesaid, at said district, by E. C. Estes, his attorney, drew his certain writing of that date, addressed to the said J. Silverbery & Co., at said Canton, and thereby requested the said J. Silverbery & Co. to pay, on the first day of June, in the year 1840, after the date of that first of exchange, second and third of same tenor and date unpaid, to the order of Messrs. Searles and Vanderhurst, twenty-six hundred and seventy-six $\frac{1}{100}$ dollars at the branch of the Commercial Bank of Natchez, at Canton, value received; and also that the said Searles and Vanderhurst afterwards, to wit, on the day and year first aforesaid, there duly endorsed on the back of the said writing their said firm name of Searles and Vanderhurst, and the said defendants then and there duly endorsed on the back of said writing the following words, and their said firm name, to wit, "pay Moses Wanzer. Tupper & Rollins." And the said plaintiff avers, that, at the time when the said defendants so made their said endorsement as aforesaid, they, the said defendants, there had in their hands a large amount of debts and securities which then and there belonged to the said J. Silverbery & Co., and were then and there fully indemnified for their said endorsement, and that in consideration thereof the said defendants made their endorsement aforesaid; and further, that Charles J. Searles, the surviving partner of said J. Silverbery & Co., then and there duly wrote upon the face of said writing the words following, to wit: "Accepted. J. Silverbery & Co., in liquidation, by Chas. J. Searles, surviving partner;" and also that the said writing, so endorsed and accepted as aforesaid, was afterwards, to wit, on the day and year first aforesaid, there duly delivered to the said plaintiff in payment of the said indebtedness of the said J. Silverbery & Co., and was then and there duly received by the said plaintiff in payment of such indebtedness. And the said plaintiff further avers, that at the time of such endorsement and delivery, to wit, on the day and year first aforesaid, at said district, the said defendants, in consideration of the premises, undertook, and then and there specially promised and agreed to and with the said plaintiff, that they, the said defendants, would become the payers of the said sum of money in said writing specified, and that they would pay to the said plaintiff the said sum of money when the same should become due and payable.

6th. And for that also, heretofore, to wit, on the 13th day of April,

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in the year 1839, at Canton, to wit, at the district aforesaid, J. Silverbery & Co. were indebted to the said plaintiff in another large sum of money, to wit, the sum of twenty-six hundred and seventy-six $\frac{11}{100}$ dollars; and the said plaintiff thereafter, to wit, on the day and year aforesaid, at said district, by E. C. Estes, his attorney, drew his certain other writing of that date addressed to the said J. Silverbery & Co. at said Canton, and thereby requested the said J. Silverbery & Co. to pay, on the first day of June, in the year 1840, after the date of that first of exchange, second and third of the same tenor and date unpaid, to the order of Messrs. Searles & Vanderhurst, twenty-six hundred and seventy-six $\frac{11}{100}$ dollars at the branch of the Commercial Bank of Natchez, at Canton, value received; and also that the said Searles & Vanderhurst afterwards, on, to wit, the day and year first aforesaid, there duly endorsed on the back of said writing their said firm name of Searles & Vanderhurst, and the said defendants then and there duly endorsed on the back of said writing their said firm name of Tupper & Rollins; and the said plaintiff avers, that at the time when the said defendants so made their said endorsement as aforesaid, they, the said defendants, there had in their hands a large amount of debts and securities which then and there belonged to the said J. Silverbery & Co., and were then and there fully indemnified for their said endorsement; and that in consideration thereof the said defendants made their endorsement aforesaid; and further that Charles J. Searles, the surviving partner of said J. Silverbery & Co., then and there duly endorsed upon the face of said writing the words following, to wit: "Accepted. J. Silverbery & Co., in liquidation, by Chas. J. Searles, surviving partner;" and also, that the said writing, so endorsed and accepted as aforesaid, was afterwards, to wit, on the day and year first aforesaid, there duly delivered to the said plaintiff in payment of the said indebtedness of the said J. Silverbery & Co., and was then and there duly received by the said plaintiff in payment of such indebtedness. And the said plaintiff avers, that at the time of such endorsement and delivery, to wit, on the day and year first aforesaid, at said district, the said defendants, in consideration of the premises, undertook, and then and there specially promised and agreed, to and with the said plaintiff, that they, the said defendants, would become the payers of the said sum of money in said writing specified, and that they would pay to the said plaintiff the said sum of money when the same should become due and payable.

7th. And for that also, heretofore, to wit, on the 13th day of April, in the year 1839, at Canton, to wit, at the district aforesaid, the said plaintiff had and held a claim against J. Silverbery & Co., and the said plaintiff thereafter, to wit, on the day and year aforesaid, at said district, by E. C. Estes his attorney, drew his certain other writing of that date, addressed to the said J. Silverbery & Co., at said Canton, and thereby requested the said J. Silverbery & Co. to pay on the first day of June, in the year 1840, after the date of that first of exchange, second and third of the same tenor and date unpaid, to the order of Messrs. Searles & Vanderhurst, twenty-six hundred and seventy-six

$\frac{11}{100}$ dollars, at the branch of Commercial Bank of Natchez, at Canton, value received; and also, that the said Searles & Vanderhurst afterwards, to wit, on the day and year first aforesaid, there duly endorsed on the back of the said writing their said firm name of Searles & Vanderhurst; and the said defendants then and there duly endorsed on the back of the said writing the words following, and their said firm name, to wit: "Pay Moses Wanzer. Tupper & Rollins." And the said plaintiff avers, that at the time when the said defendants so made their said endorsement as aforesaid, they, the said defendants, there had in their hands a large amount of debts and securities which then and there belonged to the said J. Silverbery & Co., and were then and there fully indemnified for their said endorsement; and that in consideration thereof the said defendants made their endorsement aforesaid; and further, that Chas. J. Searles, the surviving partner of said J. Silverbery & Co., then and there duly wrote on the face of said writing the words following, to wit: "Accepted. J. Silverbery & Co., in liquidation, by Chas. J. Searles, surviving partner;" and also, that the said writing, so endorsed and accepted as aforesaid, was afterwards, to wit, on the day and year first aforesaid, there duly delivered to the said plaintiff in payment of the said claim so as aforesaid had and held by him against the said J. Silverbery & Co., and was then and there received by the said plaintiff in payment of the said claim; and the said plaintiff further avers, that at the time of such endorsement and delivery, to wit, on the day and year first aforesaid, at said district, the said defendants in consideration of the premises undertook, and then and there specially promised and agreed, to and with the said plaintiff, that they, the said defendants, would become the payers of the said sum of money in the said writing specified, and that they would pay to the said plaintiff the said sum of money when the same should become due and payable.

8th. And for that also, heretofore, to wit, on the 13th day of April, in the year 1839, at Canton, to wit, at the district aforesaid, the said plaintiff had and held another claim against J. Silverbery & Co., and the said plaintiff thereafter, to wit, on the day and year aforesaid, at the said district, by E. C. Estes, his attorney, drew his certain other writing of that date, addressed to the said J Silverbery & Co., at said Canton, and thereby requested the said J. Silverbery & Co. to pay on the first day of June, in the year 1840, after the date of that first of exchange, second and third of the same tenor and date unpaid, to the order of Messrs. Searles & Vanderhurst, twenty-six hundred and seventy-six $\frac{11}{100}$ dollars, at the branch of the Commercial Bank of Natchez, at Canton, value received; and also, that the said Searles & Vanderhurst afterwards, to wit, on the day and year first aforesaid, there duly endorsed on the back of the said writing their said firm name of Searles & Vanderhurst, and the said defendants then and there duly endorsed on the back of the said writing their said firm name of Tupper & Rollins; and the said plaintiff avers, that at the time when the said defendants so made their said endorsement

as aforesaid, they, the said defendants, there had in their hands a large amount of debts and securities, which then and there belonged to the said J. Silverbery & Co., and were then and there fully indemnified for their said endorsement, and that in consideration thereof the said defendants made their endorsement aforesaid; and further, that Chas. J. Searles, the surviving partner of the firm of J. Silverbery & Co., then and there duly wrote upon the face of said writing the words following, to wit: "Accepted. J. Silverbery & Co., in liquidation, by Chas. J. Searles, surviving partner;" and also, that the said writing, so endorsed and accepted as aforesaid, was afterwards, to wit, on the day and year first aforesaid, there duly delivered to the said plaintiff in payment of the said claim so as aforesaid had and held by the said plaintiff against the said J. Silverbery & Co., and was then and there received by the said plaintiff in payment of the said claim. And the said plaintiff further avers, that at the time of such endorsement and delivery, to wit, on the day and year first aforesaid, at said district, the said defendants in consideration of the premises undertook, and then and there specially promised and agreed, to and with the said plaintiff, that they, the said defendants, would become the payers of the said sum of money in the said writing specified, and that they would pay to the said plaintiff the said sum of money when the same should become due and payable.

9th. And whereas, also, the said defendants, afterwards, to wit, on the fourth day of June, in the year of our Lord one thousand eight hundred and forty, at the district aforesaid, were indebted to the said plaintiff in the further sum of twenty-eight hundred and thirteen and $\frac{91}{100}$ dollars, lawful money, for so much money before that time lent and advanced by the said plaintiff to the said defendants, and at the special instance and request of said defendants; and for other money by the said plaintiff before that time paid, laid out, and expended for the said defendants, and at the like request of the said defendants; and for other money by the said defendants before that time had and received, to and for the use of the said plaintiff; and being so indebted, the said defendants in consideration thereof, afterwards, to wit, on the same day and year last aforesaid, and at the district aforesaid, undertook, and then and there faithfully promised the said plaintiff well and truly to pay unto the said plaintiff the said several sums of money in this count mentioned when the said defendants should be thereunto afterwards requested.

And whereas, also, the said defendants, afterwards, to wit, on the same day and year last aforesaid, at the district aforesaid, accounted together with the said plaintiff of and concerning divers other sums of money before that time due and owing from the said defendants to the said plaintiff, and then and there being in arrear and unpaid; and upon such accounting the said defendants then and there were found to be in arrear and indebted to the said plaintiff in the further sum of twenty-eight hundred and thirteen and $\frac{91}{100}$ dollars of like lawful money as aforesaid; and being so found in arrear and indebted to the said plain-

tiff, the said defendants in consideration thereof, afterwards, to wit, on the same day and year last aforesaid, and at the district aforesaid, undertook, and then and there faithfully promised the said plaintiff well and truly to pay unto the said plaintiff the said sum of money last mentioned when the said defendants should be thereunto afterwards requested.

Nevertheless the said defendants, although often requested, have not yet paid the said several sums of money above mentioned, or any or either of them, or any part thereof, to the said plaintiff; but to pay the same, or any part thereof, to the said plaintiff, the said defendants have hitherto altogether refused, and still do refuse, to the damage of the said plaintiff of six thousand dollars; and therefore the said plaintiff brings his suit, &c.

VAN WINKLE & POTTER,
Attorneys for plaintiff.

Copy of bill of exchange sued on above.

No. Exchange for $2,676 $\frac{11}{100}$.

CANTON, *April* 13, 1839.

On the 1st June, 1840, after date of this first of exchange, second and third of the same tenor and date, unpaid pay to the order of Messrs. Searles and Vanderhurst twenty-six hundred and seventy-six $\frac{11}{100}$ dollars, at the branch of the Commercial Bank of Natchez, at Canton, value received, and place the same to account as advised by—

Your obedient servant,
MOSES WANZER,
By E. C. ESTES, *Attorney.*

To MESSRS. J. SILVERBERY & Co., *Canton, Miss.*

Due $\frac{1}{4}$ June, 1840.

Accepted—
J. SILVERBERY & Co.,
By CHAS. J. SEARLES,
Surviving partner.

Endorsed. Searles and Vanderhurst pay Moses Wanzer.
TUPPER & ROLLINS.
MOSES WANZER.

The defendants,		*To the plaintiff, Dr.*
June 4, 1840.	To amount of their endorsement of J. Silverbery & Co's acceptance, - - -	$2,676 11
	Interest on ditto, - - - - -	
	To damages on said acceptance, - -	133 80
	To fees for protesting said acceptance, -	4 00

And the defendants by attorney come and defend the wrong and injury, when, &c., and for plea say, the plaintiff his action aforesaid against them in this behalf to have and maintain ought not, because

they say, they did not undertake and promise in manner and form as the said plaintiff hath above thereof complained against them; and of this they put themselves upon the country.

MAYES & CLIFTON,
For defendants.

And the said defendants by attorney come and defend the wrong and injury, when, &c., and say, actio non, as to the first count in said declaration; because they say that the said first count of said declaration, and the matter therein contained, in manner and form as the same are therein stated and set forth, are not sufficient in law for said plaintiff to have and maintain his aforesaid action on said count; and that defendants are not bound by law to answer the same; and this they are ready to verify, &c., wherefore, &c.

And as to the second count in said declaration defendants say, actio non; because they say that said second count, and the matters therein contained, in manner and form as the same are therein stated and set forth, are not sufficient in law for said plaintiff to have and maintain his aforesaid action on said second count against them, and that they, said defendants, are not bound by law to answer the same; and this they are ready to verify; wherefore, &c.

And as to the third count in said declaration defendants say, actio non; because they say that the said third count, and the matters therein contained, in manner and form as the same are therein stated and set forth, are not sufficient in law for said plaintiff to have and maintain his aforesaid action on said third count against them, and that said defendants are not bound by law to answer the same; and this they are ready to verify; wherefore, &c.

And as to the fourth count in said declaration defendants say, actio non; because they say that the said fourth count, and the matters therein contained, in manner and form as the same are therein stated and set forth, are not sufficient in law for said plaintiff to have and maintain his aforesaid action on said fourth count against them, and that said defendants are not bound by law to answer the same; and this they are ready to verify; wherefore, &c.

And as to the fifth count in said declaration, &c., defendants say, actio non; because they say that the said fifth count, and the matters therein contained, in manner and form as the same are therein stated and set forth, are not sufficient in law for said plaintiff to have and maintain his aforesaid action on said fifth count against them, and that said defendants are not bound by law to answer the same; and this they are ready to verify; wherefore, &c.

And as to the sixth count in said declaration, defendants say, actio non; because they say that said sixth count, and the matters therein contained, in manner and form as the same are therein stated and set forth, *and* not sufficient in law for said plaintiff to have and maintain his aforesaid action on said sixth count against them, and that they, said defendants, are not bound by law to answer the same; and this they are ready to verify; wherefore they pray judgment, &c.

And as to the seventh count in said declaration, defendants say, actio non; because they say that said seventh count, and the matters therein contained, *are* in manner and form as the same are therein stated and set forth, are not sufficient in law for said plaintiff to have and maintain his aforesaid action on said seventh count against them, and that they, said defendants, are not bound by law to answer the same; and this they are ready to verify; wherefore, &c.

And as to the eighth count in said declaration, defendants say, actio non; because they say that said eighth count, and the matters therein contained, in manner and form as the same are therein stated and set forth, are not sufficient in law for said plaintiff to have and maintain his aforesaid action on said eighth count against them, and that said defendants are not bound by law to answer the same; and this they are ready to verify; wherefore, &c.

MAYES & CLIFTON,
For defendants.

And the said plaintiff saith that the said first count in the said declaration, and the matters therein contained, in manner and form as the same are above stated and set forth, are sufficient in law for him, the said plaintiff, to have and maintain his aforesaid action thereof against the said defendants; and the said plaintiff is ready to verify and prove the same as the court here shall direct and award. Wherefore, inasmuch as the said defendants have not answered the said first count, nor hitherto in any manner denied the same, the said plaintiff prays judgment and his damages, by reason of the not performing of the said several promises and undertakings in the said first count mentioned, to be adjudged to him, &c.

VAN WINKLE & POTTER,
For plaintiff.

And the said plaintiff saith that the said second count in the said declaration, and the matters therein contained, in manner and form as the same are above stated and set forth, are sufficient in law for him, the said plaintiff, to have and maintain his aforesaid action thereof against the said defendants; and the said plaintiff is ready to verify and prove the same as the court here shall direct and award. Wherefore, inasmuch as the said defendants have not answered the said second count, nor hitherto in any manner denied the same, the said plaintiff prays judgment and his damages, by reason of the not performing of the said several promises and undertakings in the said second count mentioned, to be adjudged to him, &c.

VAN WINKLE & POTTER,
For plaintiff.

And the said plaintiff saith that the said third count in the said declaration, and the matters therein contained, in manner and form as the same are above stated and set forth, are sufficient in law for him, the said plaintiff, to have and maintain his aforesaid action thereof against the said defendants, and the said plaintiff is ready to verify and prove

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the same as the court here shall direct and award; wherefore, inasmuch as the said defendants have not answered the said third count, nor hitherto in any manner denied the same, the said plaintiff prays judgment and his damages by reason of the not performing of the said several promises and undertakings in this said third count mentioned, to be adjudged to him, &c.

VAN WINKLE & POTTER,
For Plaintiff.

And the said plaintiff saith that the said fourth count in the said declaration, and the matters therein contained, in manner and form as the same are above stated and set forth, are sufficient in law for him, the said plaintiff, to have and maintain his aforesaid action thereof against the said defendants, and the said plaintiff is ready to verify and prove the same as the court here shall direct and award; wherefore, inasmuch as the said defendants have not answered the said fourth count, nor hitherto in any manner denied the same, the said plaintiff prays judgment and his damages, by reason of the not performing of the said several promises and undertakings in the said fourth count mentioned, to be adjudged to him, &c.

VAN WINKLE & POTTER.
For Plaintiff.

And the said plaintiff saith that the said fifth count in the said declaration, and the matters therein contained, in manner and form as the same are above stated and set forth, are sufficient in law for him, the said plaintiff, to have and maintain his aforesaid action thereof against the said defendants, and the said plaintiff is ready to verify and prove the same as the court here shall direct and award; wherefore, inasmuch as the said defendants have not answered the said fifth count, nor hitherto in any manner denied the same, the said plaintiff prays judgment and his damages, by reason of the not performing of the said several promises and undertakings in said fifth count mentioned, to be adjudged to him, &c.

VAN WINKLE & POTTER,
For Plaintiff.

And the said plaintiff saith that the said sixth count in the said declaration, and the matters therein contained, in manner and form as the same are above stated and set forth, are sufficient in law for him, the said plaintiff, to have and maintain his aforesaid action thereof against the said defendants, and the said plaintiff is ready to verify and prove the same as the court here shall direct and award; wherefore, inasmuch as the said defendants have not answered the said sixth count, nor hitherto in any manner denied the same, the said plaintiff prays judgment and his damages, by reason of the not performing of the said several promises and undertakings in the said sixth count mentioned, to be adjudged to him, &c.

VAN WINKLE & POTTER,
For Plaintiff.

And the said plaintiff saith that the said seventh count in the said declaration, and the matters therein contained, in manner and form as the same are above stated and set forth, are sufficient in law for him, the said plaintiff, to have and maintain his aforesaid action thereof against the said defendants, and the said plaintiff is ready to verify and prove the same as the court here shall direct and award; wherefore, inasmuch as the said defendants have not answered the said seventh count, nor hitherto in any manner denied the same, the said plaintiff prays judgment and his damages, by reason of the not performing of the said several promises and undertakings in the said seventh count mentioned, to be adjudged to him, &c.

VAN WINKLE & POTTER,
For Plaintiff.

And the said plaintiff saith, that the said eighth count in the said declaration, and the matters therein contained, in manner and form *are* the same as above stated and set forth, are sufficient in law for him, the said plaintiff, to have and maintain his aforesaid action thereof against the said defendants, and the said plaintiff is ready to verify and prove the same as the court here shall direct and award; wherefore, inasmuch as the said defendants have not answered the said eighth count, nor in any manner denied the same, the said plaintiff prays judgment and his damages, by reason of the not performing of the said several promises and undertakings in the said eighth count mentioned, to be adjudged to him, &c.

VAN WINKLE & POTTER,
For Plaintiff.

And afterwards, to wit, at the said November term of the court aforesaid, in the year of our Lord one thousand eight hundred and forty-five, to wit, on the seventh day of November, A. D. 1845, the following order was made and entered upon the minutes of said court: "It is ordered by the court that the demurrer to narr. *by* overruled and leave given to plead over," and thereupon the defendants filed the following pleas, to wit:

And the said defendants for plea to the 5th, 6th, 7th and 8th counts of plaintiff's declaration, say that plaintiff his action aforesaid to have and maintain, by reason of any thing therein contained ought not; because they say that by an act to prevent frauds and perjuries it is enacted, that no action shall be brought, whereby to charge the defendant upon any agreement which is not to be performed within the space of one year from the making thereof, unless the promise or agreement upon which such action shall be brought, or some memorandum or note thereof, shall be in writing, and signed by the party to be charged therewith, or some other person by him or her thereunto lawfully authorized; and that the said 5, 6, 7, and 8th counts of said declaration are each upon an agreement which was not to be performed within the space of one year from the making thereof, and that there is not, and was not, any agreement in writing, or memorandum,

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or note thereof, signed by these defendants, or either of them, or by any other person by them, or either of them, thereunto lawfully authorized, and this they are ready to verify; wherefore, &c.

MAYES & CLIFTON,
For Defendants.

And for further plea to the said 5, 6, 7, and 8 counts of said declaration, the said defendants say, that by an act to prevent frauds and perjuries it is enacted, that no action shall be brought whereby to charge the defendant upon any special promise to answer for the debt, default, or miscarriage of another person, unless the promise or agreement upon which such action *such action* shall be brought, or some memorandum or note thereof, shall be in writing, and signed by the party to be charged therewith, or some other person by him or her thereunto lawfully authorized; and that the plaintiff in the said 5th, 6th, 7th, and 8th counts of said declaration, have declared against these defendants upon a special promise to answer for the debt of another person, and that the said special promise was not, nor was any note or memorandum thereof in writing, signed by them, or either of them, or by any other person by them, or either of them, thereunto lawfully authorized, and this they are ready to verify; wherefore, &c.

MAYES & CLIFTON,
For Defendants.

And for plea to the 1st, 2d, 3d, 4th, and 9th counts of said declaration, the said defendants say, the plaintiff his action aforesaid to have and maintain against them ought not, because they say, they did not assume in manner and form as the plaintiff hath therein complained against them; and of this they put themselves upon the country.

MAYES & CLIFTON,
For Defendants.

And the said plaintiff doth the like.

VAN WINKLE & POTTER,
For Plaintiff.

And the said plaintiff, as to the said plea by the said defendants first above pleaded to the said 5, 6, 7, and 8th counts of said declaration, saith, that by reason of any thing in the said plea alleged, he ought not to be barred or precluded from having or maintaining his aforesaid action thereof as to the said counts against the said defendants, because he says that a sufficient memorandum in writing of the contract, on which the promise mentioned in each of the said counts is founded, to wit, the said writings in said counts described and endorsed by the said defendants, and written upon as therein alleged, was on, to wit, the day and year in the said counts first mentioned, at the district aforesaid, signed by the said defendants; and this he prays may be enquired of by the country.

VAN WINKLE & POTTER,
For Plaintiff.

And the said plaintiff, as to the said plea by the said defendants secondly above pleaded, to the said 5, 6, 7, and 8th counts of said declaration, saith, that by reason of any thing in the said plea alleged, he ought not to be barred or precluded from having or maintaining his aforesaid action thereof as to the said counts against the said defendants, because he says that the promises declared in the said counts are not special promises to answer for the debt of another person, but that the promise declared on in each of the said counts is the original promise of the said defendants, and a sufficient memorandum in writing of the contract, on which the promise declared on in each of the said counts is founded, to wit, the said writings in the said counts described and endorsed by the said defendants, and written upon as therein alleged, was on, to wit, the day and year in the said counts first mentioned, at the district aforesaid, signed by the said defendants; and this he prays may be enquired of by the country.

VAN WINKLE & POTTER,
For Plaintiff.

And the said defendants say, the plaintiff his action aforesaid, as to the 5, 6, 7, and 8th counts of his said declaration, to have and maintain against them, by reason of his replication to the first plea of the statute of frauds above pleaded, ought not; because he says the said replication, and the matters and things therein contained, are not good and sufficient in law, nor is he bound by the laws of the land to make other or further answer thereto, and this he is ready to verify; wherefore, &c.

MAYES & CLIFTON,
For Defendants.

And as to the plaintiff's replication to the plea of the statute of frauds secondly above pleaded, the said defendants say, actio non, because they say that the said replication, and the matters and things therein contained, are not good and sufficient in law, and this they are ready to verify; wherefore, &c.

MAYES & CLIFTON,
For Defendants.

And the said plaintiff saith, that the said replication to the said first plea of the statu te of frauds, and the matters therein contained, in manner and form as the same are above pleaded and set forth, are sufficient in law for him, the said plaintiff, to have and maintain his aforesaid action thereof as to the said 5, 6, 7, and 8th counts of his said declaration against the said defendants, and the said plaintiff is ready to verify and prove the same as, &c.; wherefore, he prays judgment, &c.

VAN WINKLE & POTTER,
For Plaintiff.

And the said plaintiff saith, that the said replication to the said plea of the statute of frauds by the said defendants secondly above pleaded, and the matters therein contained, in manner and form as the same are above pleaded and set forth, are sufficient in law for him, the said plaintiff, to have and maintain his aforesaid action thereof as to the said 5, 6, 7,

and 8th counts of his said declaration against the said defendants, and the said plaintiff is ready to verify and prove the same as, &c.; wherefore he prays judgment, &c.

VAN WINKLE & POTTER, *for Plaintiff.*

Judgment for the plaintiff upon demurrer to replication.

And afterwards, to wit, at the November term of said court, in the year of our Lord one thousand eight hundred and forty-five, to wit, on the nineteenth day of November, 1845, until which time this cause was regularly continued, came the parties aforesaid, by their respective attorneys, and the defendants' demurrers to the plaintiff's replications to the first and second pleas of said defendants to the fifth, sixth, seventh and eighth counts of the said plaintiff's declaration being now fully argued and heard, and mature deliberation being thereupon had, it is ordered by the court that the said demurrers, as to the said replications, be overruled; and for that it appears to the court here, that the said first and second pleas of the said defendants to the said fifth, sixth, seventh, and eighth counts of the said plaintiff's declaration, and the matters therein contained, are not sufficient in law to preclude the said plaintiff from having and maintaining his said action against the said defend ants, in manner and form as the said plaintiff has above alleged.

Therefore, it is considered by the court here that the said defendants answer over to the said declaration of the plaintiff.

And thereupon the said defendants filed the following pleas, to wit:

And the said defendants, pursuant to the judgment of respondeat ouster, as the same relates to the first plea of the statute of frauds by them herein pleaded, say, actio non, as to the said 5th, 6th, 7th, and 8th counts, because they say that by an act to prevent frauds and perjuries, it is enacted that no action shall be brought whereby to charge the defendant upon any agreement which is not to be performed within the space of one year from the making thereof, unless the promise or agreement upon which such action shall be brought, or some memorandum or note thereof, shall be in writing, and signed by the party to be charged therewith, or some other person by him or her thereunto lawfully authorized, and that the said 5, 6, 7, and 8th counts of said declaration are each upon an agreement which was not to be performed with[in] the space of one year from the making thereof, and that there is not, and never was, any note or memorandum in writing of the promises or agreements, or either of them, in said counts, or either of said counts, set forth and declared on, signed by these defendants or either of them, or by any other person by them or either of them thereunto lawfully authorized, and this they are ready to verify; wherefore, &c.

MAYES & CLIFTON, *for Defendants.*

And the said plaintiff, as to the said plea by the said defendants above pleaded, pursuant to the judgment of respondeat ouster, to the said 5, 6, 7, and 8th counts of said declaration, saith, that by reason of any thing in the said plea alleged, he ought not to be barred or precluded from having or maintaining his aforesaid action thereof as to the said counts against the said defendants, because he says that a sufficient

memorandum in writing of the contract on which the promise mentioned in each of the said counts is founded, to wit, the said writings in said counts described, and endorsed by the said defendants, and written upon as therein alleged, was on, to wit, the day and year in the said counts first mentioned, at the district aforesaid, signed as by the said statute required; and this he prays may be enquired of by the country.

VAN WINKLE & POTTER, *for Plaintiff.*

And afterwards, to wit, at the said November term of the court aforesaid, to wit, on the 3d day of November, in the year of our Lord one thousand eight hundred and forty-six, until which time this was legally continued, came the parties aforesaid by their respective attorneys, and the defendants, by their attorneys, hereby withdraw their said last plea by them herein pleaded; and thereupon a jury being called, came, to wit, J. R. Enocks, Jesse Hartz, Wm. White, jr., Henry Long, Silas Steen, Sam'l Pringle, Seth Barrow, Ben. Sutherland, Norval Douglass, A. W. McGow, Jeff. Love, John Simmons, who being empannelled, tried, and sworn, to speak the truth concerning the matters within contained, do say upon their oaths, that they find for the defendants upon the issue joined.

Bill of exceptions tendered by the plaintiff.

UNITED STATES OF AMERICA,
Southern district of Mississippi:

In the circuit court thereof to November term, A. D. 1846.

Be it remembered, that on the trial of this cause before the jury, at the term aforesaid, the said plaintiff, by his counsel, offered and read in evidence to the jury the bill of exchange, or writing sued on, with the writings and endorsements thereon; which said bill or writing, with the writings and endorsements thereon, is in the words and figures following, to wit:

CANTON, *April* 13, 1839.

No. Exchange for $\$2{,}676\frac{11}{100}$.

On 1st June, 1840, after date of this first of exchange, second and third of the same tenor and date unpaid, pay to the order of Messrs. Searles and Vanderhurst, twenty-six hundred and seventy-six $\frac{11}{100}$ dollars, at the branch of the Commercial Bank of Natchez, at Canton, value received, and place the same to account, as advised by

Your obedient servant, MOSES WANZER.
By E. C. ESTES, *Attorney.*

To Messrs. J. SILVERBERY & Co., *Canton, Mississippi.*

Due $\frac{1}{4}$ June, 1840.

Accepted, J. SILVERBERY & CO.
In liquidation, By CHARLES J. SEARLES,
Surviving partner.

Endorsed, SEARLES & VANDERHURST.

Pay Moses Wanzer,

TUPPER & ROLLINS.

And also offered and read in evidence to the jury the protest annexed to the said bill or writing; which said protest is in the words and figures following, to wit:

UNITED STATES OF AMERICA,
State of Mississippi, Madison county:

By this public instrument of protest be it known, that on this the fourth day of June, 1840, at the request of John Mann, esq., cashier, the holder of the original bill of exchange, of which a true copy is annexed, I, Henry White, justice of the peace, and ex officio notary public, residing in the town of Canton, qualified according to law, went to the branch of the Commercial Bank of Natchez, at Canton, and demanded payment, which was refused by the cashier thereof. Whereupon I, the said notary public, at the request aforesaid, do hereby solemnly and publicly protest the said bill of exchange, as well against the drawer thereof as against all others whom it doth or may concern, for all exchange, re-exchange, costs, charges, damages, and interest, suffered or to suffer, for the non-payment of said bill of exchange, thus solemnly done and protested. Given under my hand and seal at Canton, the day and year above written.

HENRY WHITE, *J. P.* [L. S.]
Notary public.

CANTON, *April* 13, 1839.

No. Exchange for $2,676\frac{11}{100}$.

On 1st June, 1840, after date of this first of exchange, second and third of the same tenor and date unpaid, pay to the order of Messrs. Searles and Vanderhurst, twenty-six hundred and seventy-six $\frac{11}{100}$ dollars, at the branch of the Commercial Bank of Natchez, at Canton, value received, and place the same to account, as advised by—

Your obedient servant,
MOSES WANZER.
By E. C. ESTES, *Attorney.*

To Messrs. J. SILVERBERY & Co.,
Canton, Miss.

Due $\frac{1}{4}$ June, 1840.
Accepted,
J. SILVERBERY & CO.
In liquidation,
By CHAS. J. SEARLES,
Surviving partner.

Endorsed—
SEARLES & VANDERHURST.
Pay Moses Wanzer,
TUPPER & ROLLINS.
Pay J. C. Crane, esq., or order.
MOSES WANZER.

But the counsel for defendants objected to the reading of said papers as evidence in said cause, and reserved their right to move the court to reject the same; and thereupon the said plaintiff, by his counsel, also offered and read in evidence to said jury the deposition of Henry White, but the defendants reserve their right to move to reject the same, so far as it was offered as evidence of a due demand; which said deposition is in the words and figures following, to wit:

MOSES WANZER, }
vs. }
TUPPER & ROLLINS. }

In circuit court of the United States, southern district of Mississippi, to November term, 1843.

Interrogatories to be propounded to Henry White, of the county of Madison, and State of Mississippi, the answers to which will be offered as evidence in behalf of the plaintiff on the trial of the above stated case.

Interrogatory 1st. Are you acquainted with the parties to this suit, plaintiffs and defendants?

Int. 2d. Are you interested in the result of this suit?

Int. 3d. Please look on a copy of a bill of exchange and endorsements, on the reverse side of this page, marked A, and state whether you ever had the original in your possession? If so, state whether you protested the same for non-payment; if so, state when, where, and whether you gave notices to the drawer and endorsers of the protest of the same for non-payment; and if so, state at what time and to what place the notices were sent, and in what manner?

Int. 4th. Tell, if any thing occurred while the bill of exchange (a copy whereof marked A on the reverse side hereof) was in your hands, which you have not stated in the above interrogatories; please state the same fully and explicitly.

VAN WINKLE & POTTER, *Plaintiff's attorneys.*

Document referred to in 3d and 4th interrogatories, marked A.

CANTON, *April* 13, 1839.

No. Exchange for $\$2{,}676\frac{11}{100}$.

On 1st June, 1840, after date of this first of exchange, second and third of the same tenor and date unpaid, pay to the order of Messrs. Searles & Vanderhurst, twenty-six hundred and seventy-six $\frac{11}{100}$ dollars, at the branch of the Commercial Bank of Natchez, at Canton, value received, and place the same to account, as advised by your obedient servant,

MOSES WANZER.
By E. C. ESTES, *Attorney.*

To Messrs. J. SILVERBERY & Co., *Canton, Mississippi.*

Accepted, J. SILVERBERY & CO.
In liquidation, By CHARLES J. SEARLES,
Surviving partner.

Endorsed— SEARLES & VANDERHURST.
Pay Moses Wanzer, TUPPER & ROLLINS.
Pay J. C. Crane, or order, MOSES WANZER.

Cross interrogatories of defendants.

Int. 1. At what time in the day on 4th day of June, 1840, did you demand payment of the bill of exchange mentioned in your preceding answer; and of whom did you make such demand?

Int. 2. What disposition did you make of the bill of exchange, after you protested the same as aforesaid; and what were the usual banking hours of said bank?

Int. 3. What was the form of the notice you say you handed to T. C. Tupper?

Int. 4. Were you on the 4th day of June, 1840, a citizen of the United States and of the State of Mississippi?

Int. 5. State whether you are a native of the United States of America; if not, of what State or Kingdom were you formerly a subject; and since you became a resident of the United States, have any proceedings been had for your becoming a citizen of the United States, and state all such proceedings, when had, and what they were?

TUPPER.

Additional interrogatory in chief.

Were you an acting justice of the peace on the 4th day of June, A. D. 1840, when you protested said bill of exchange, referred to in 3d and 4th interrogatories in chief?

VAN WINKLE & POTTER,
Plaintiff's attorneys.

We consent that Thomas Shakelford, esq., United States commissioner, may take the deposition of Henry White on the foregoing interrogatories, subject to all legal exceptions, except as to the form and manner of taking the same.

T. C. TUPPER,
For TUPPER & ROLLINS.
VAN WINKLE & POTTER,
Plaintiff's attorneys.

UNITED STATES OF AMERICA,
Southern district of Mississippi.

Deposition of Henry White, a witness produced, sworn, and examined on the twenty-second day of February, A. D. eighteen hundred and forty-four, at the office of Thomas Shakelford, in the town of Canton, Madison county, State of Mississippi, United States commissioner of affidavits, &c., for the southern district of Mississippi, and appointed and commissioned, &c., by the circuit court of the United States, for the southern district of Mississippi.

The deposition taken by consent of plaintiff's counsel and defendants, to be read in evidence on the part of the plaintiff, in a suit pending in the circuit court of the United States, for the southern district of Mississippi, on the law side thereof, wherein Moses Wanzer is plaintiff, and Tupper & Rollins are defendants.

The said Henry White, of the said county of Madison, and of lawful age, being produced, duly sworn according to law, and examined on behalf of the plaintiff, to the interrogatories in chief, and to cross interrogatories filed, deposeth as follows:

For answer to the first interrogatory annexed and propounded to him deponent says, that he is not acquainted with the plaintiff in said suit, but is with the defendants, Messrs. Tupper & Rollins.

For answer to the second interrogatory annexed deponent says, that he is not at all interested in the event of said suit.

For answer to the third interrogatory annexed deponent says, that he had the original bill of exchange in his possession, of which a true copy of said bill of exchange, marked A, follows said third interrogatory, and that he protested the same for non-payment on the fourth day of June, A. D. eighteen hundred and forty, at Canton, and gave notice to the drawers and endorsers, and in the following manner, to wit:

"To Charles J. Searles, notices of the protest of said bill of exchange for non-payment, handed to him on the fourth day of June, 1840, addressed to Messrs. J. Silverbery & Co., and to Messrs. Searles and Vanderhurst; and also a notice of the protest of said bill of exchange for non-payment to Messrs. Tupper & Rollins, and handed the same to Mr. T. C. Tupper, on the fourth day of June, eighteen hundred and forty, the day of the protest, and to Moses Wanzer, esq., New York, deposited in the post office at Canton at 6½ o'clock, P. M., of the same day of protest."

For answer to the fourth interrogatory annexed deponent says, that he had the original bill of exchange, a true copy of which is annexed to 3d and 4th interrogatories, on the 4th day of June, A. D. eighteen hundred and forty, and at the request of John Munn, the holder of the said bill, he did, on the said 4th day of June, (1840,) eighteen hundred and forty, between the hours of ten o'clock, A. M., and three o'clock, P. M., go to the branch of the Commercial Bank of Natchez, at Canton, with the said original bill, and presented the same to the cashier, John Munn, and demanded payment of the same, which was refused by the cashier thereof.

Whereupon, the said deponent protested the said bill of exchange for non-payment in the usual form, and gave the notices of protest as stated in his answer to third interrogatory.

Answers of deponent White to cross interrogatories by defendants.

For answer to the first cross interrogatory annexed deponent says, that he demanded payment of said bill of exchange from John Munn, the cashier of the said Commercial Bank, at the branch at Canton, in banking hours; he thinks between the hours of 10 o'clock, A. M., and 1 o'clock, P. M.

For answer to the second cross interrogatory annexed deponent says, that he returned the said bill of exchange, with the protest, to John Munn, cashier, and holder, from whom deponent received it; said bill

was returned on the same day of protest, during banking hours; which were, as deponent believes, between 10 o'clock, A. M., and 3 o'clock, P. M.

For answer to the third cross interrogatory annexed deponent says, that it was a printed form; a copy of which, with a memorandum on same hereto annexed, marked A, which he wishes to be part of his answer to this third interrogatory.

For answer to the fourth cross interrogatory annexed deponent says, that he considered himself a citizen of the United States.

For answer to the fifth cross interrogatory deponent states, that he is a native of England, and a subject of Great Britain; states that he, on the 8th day of November, 1839, declared his intentions of becoming a citizen of the United States of America, before the clerk of the circuit court of the United States for the southern district of Mississippi, according to the form of the law required in such cases; which is all the proceedings taken by deponent to become a citizen of the United States.

Answer of deponent to additional interrogatory in chief.

For answer to the additional interrogatory in chief annexed deponent states, that he was an acting justice of the peace of the county of Madison, and State of Mississippi, on the fourth (4th) day of June, A. D. 1840, duly elected, commissioned, and qualified according to law, qualified and gave bond on the 11th November, 1839. And further deponent saith not, and hereto subscribes his name.

HENRY WHITE.

Copy of exhibit A.

Part of answer to third cross interrogatory.

CANTON, *June 4th*, 1840.

Please to take notice, that a note drawn by Moses Wanzer for the sum of $2,676 11 dollars, and dated the 13th day of April, 1839, was this day protested by me for non-payment, and that the holder looks to you for payment as endorser thereof.

Respectfully, HENRY WHITE, *J. P.* [L. S.]
Acting notary public.

The word note may have been erased, and bill of exchange substituted, but I cannot positively swear to either in the original notice.

HENRY WHITE.

UNITED STATES OF AMERICA,
Southern district of Mississippi:

I, Thomas Shakelford, United States commissioner of affidavits, &c., for the southern district of Mississippi, do hereby certify, that the said Henry White was by me duly sworn to certify the truth, the whole truth, and nothing but the truth, and that the foregoing deposition by him subscribed was reduced to writing by me, and taken at the time and place set forth in the caption hereof.

In testimony whereof, I grant these presents, under my signature and private seal, (having no public seal,) at Canton aforesaid, on the day and year aforesaid.

TH'S SHAKELFORD, [L. S.]
U. S. comm'r, &c.

And thereupon the said plaintiff, by his counsel, offered to read in evidence to said jury the depositions of Edwin C. Estes, John C. Crane, and James P. Thomas, but the counsel for the defendants objected to the reading of said depositions, on the ground that the same tended to prove an agreement, on the part of said defendants, other and different from the contracts declared on, and to vary the legal import of the said endorsement of the said defendants on said bill or writing; and also because the said depositions tended to prove an agreement void under the statute of said State, entitled "an act to prevent frauds and perjuries;" but the court overruled said objection, and the defendants reserved their exception, and said several depositions were then read to said jury as further evidence on the part of said plaintiff in said cause; which said depositions are in the words and figures following to wit:

CIRCUIT COURT OF THE UNITED STATES,
For the southern district of Mississippi:

Depositions of Edwin C. Estes and John C. Crane, witnesses, produced, sworn, and examined in the above entitled suit, on oath, on the part of the plaintiff, on the twenty-fifth day of October, in the year of our Lord one thousand eight hundred and forty-three, by and before me, Caleb S. Woodhull, a judge of the court of common pleas for the city and county of New York, in the State of New York, at my office, No. 59, Fulton street, in the said city, and not being of counsel or attorney to either of the parties to or interested in the event of this suit; the said witnesses being each first by me carefully examined, and cautioned, and sworn to testify the whole truth, Edwin C. Estes, of the city of New York, merchant, a witness, produced, sworn, and examined, on the part and behalf of the plaintiff, Moses Wanzer, deposeth and saith as follows: that he has seen, and well knows of, the bill of exchange (a copy of which is hereunto subjoined) drawn by Moses Wanzer, per deponent as his attorney, on J. Silverbery & Co., in favor of Searles & Vanderhurst, and endorsed by them and by Tupper & Rollins, dated Canton, April 13th, 1839, for $2,676 11, (two thousand six hundred and seventy-six 11-100 dollars,) and it is the bill of exchange sued upon in this cause; that deponent is acquainted with the endorsers, Tupper & Rollins; that deponent, as the agent of said Moses Wanzer, had a claim to collect against J. Silverbery & Co., and the said bill of exchange was accepted and endorsed in payment of such claim, and received by deponent for the plaintiff Moses Wanzer. And said Tupper & Rollins, at the time they endorsed said bill, specially agreed to become payers of said bill; said they had in their hands a large amount of debts and securities of J. Silverbery & Co., and that they were fully indemnified; and that, in consideration thereof, they,

the said Tupper & Rollins, were the persons who were to pay the said bill of exchange, and that they would pay it at maturity.

EDWIN C. ESTES.

Copy of bill of exchange referred to in the foregoing deposition.

No. CANTON, *April* 13, 1839.

Exchange for $2,676 11.

On 1st June, 1840, after date of this first of exchange, second and third of the same tenor and date unpaid, pay to the order of Messrs. Searles & Vanderhurst twenty-six hundred and seventy-six 11-100 dollars, at the branch of the Commercial Bank of Natchez, at Canton, value received, and place the same to account, as advised by

Your obedient servant,

MOSES WANZER,
By E. C. ESTES, *Attorney.*

To Messrs. J. SILVERBERY & Co.,
Canton, Mississippi.

Due 1—4 June, 1840.

Endorsed. SEARLES & VANDERHURST.
Pay Moses Wanzer.

TUPPER & ROLLINS.

Accepted. J. SILVERBERY & Co.,
In liquidation. By CHAS. J. SEARLES,
Surviving partner.

John C. Crane, of the city of New York, merchant, a witness, produced, sworn, and examined on the part and behalf of the plaintiff, Moses Wanzer, deposeth and saith as follows: that, in the fall of the year 1839, deponent received the original bill of exchange (a copy of which is hereto subjoined) from Moses Wanzer for collection as his agent, and deposited it in the bank where payable for collection, and deponent then endorsed said bill for that purpose only. That the subsequent year Mr. James P. Thomas was agent for Mr. Wanzer at the south, (Mississippi, and other States;) he had Mr. Wanzer's business there; that before said bill of exchange became due deponent saw the endorsers, Tupper & Rollins, and he afterwards saw them some two or three times during the season; that said Tupper & Rollins stated to deponent distinctly that they, Tupper & Rollins, were fully indemnified by J. Silverbery & Co. for their endorsement, by a large amount of debts and claims put into their hands for collection, and that they, Tupper & Rollins, were to pay said bill of exchange, and endorsed it for that purpose in consideration of such indemnity; that when deponent first called on Tupper & Rollins, he had another claim of said plaintiff against them, part due.

JOHN C. CRANE.

Copy of bill of exchange referred to in the foregoing deposition.

No. CANTON, *April* 13, 1839.

Exchange for $2,676 11.

On 1st June, 1840, after date of this first exchange, second and third of the same tenor and date unpaid, pay to the order of Messrs. Searles & Vanderhurst twenty-six hundred and seventy-six 11-100 dollars, at the branch of Commercial Bank of Natchez, at Canton, value received, and place the same to account, as advised by

Your obedient servant,

MOSES WANZER,
By E. C. ESTES, *Attorney.*

To Messrs. J. SILVERBERY & Co.,
Canton, Mississippi.

Due 1—4 June, 1840.

Endorsed. SEARLES & VANDERHURST.

Pay Moses Wanzer.

TUPPER & ROLLINS.

Accepted. J. SILVERBERY & Co.,
In liquidation. By CHAS. J. SEARLES,
Surviving partner.

The foregoing witnesses subscribing their respective depositions, each witness having first reduced to writing his deposition, and the copy bill of exchange thereto subjoined in my presence.

And I, the said Caleb S. Woodhull, do certify, that I believe the testimony of each of said witnesses to be necessary for the plaintiff in said cause, and that said witnesses live in the city of New York, being more than one hundred miles from the place of trial of said cause, and that, as I believe, Tupper & Rollins, the defendants, and their attorney or attornies, live and reside in the State of Mississippi, and are not, any of them, within one hundred miles of the city of New York.

And in consideration of the distance of the place where the trial of this cause is to be had from the city of New York, I, the said Caleb S. Woodhull, cannot deliver the said depositions with my own hand into the said circuit court of the United States, for the southern district of Mississippi; but that I, the said Caleb S. Woodhull, shall seal the same up, together with the foregoing certificate of the reasons of their being taken as above, and direct the same in my own handwriting to the said court, and endorse my name on the seal hereof.

In witness whereof, I have hereunto subscribed my name, this 25th day of October, in the year 1843.

CALEB S. WOODHULL,
Judge New York common pleas.

STATE OF NEW YORK,
City and county of New York, ss:

I, Andrew Warner, clerk of the court of common pleas for the city and county of New York, being a court of record, and the county court, do certify, that Caleb S. Woodhull, esq., before whom the annexed depositions were taken, was at the time of taking the same a judge of said court in and for said city and county, duly commissioned and sworn, and authorized to take the same; and that I am well acquainted with the handwriting of such judge, and verily believe that the signatures thereunto subscribed are genuine.

In testimony whereof, I have hereunto subscribed my name, and affixed the seal of the said court, the 25th day of October, [L. S.] 1843.

ANDREW WARNER, *Clerk.*

UNITED STATES OF AMERICA,
State of Louisiana, city of New Orleans:

I, O. P. Jackson, one of the associate judges of the city court of New Orleans and State of Louisiana, holden in said city and State, (the same being a court of common pleas and civil jurisdiction,) have this 27th day of March, A. D. 1846, called and caused J. P. Thomas, a witness for plaintiff in a certain civil suit now pending in the circuit court of the United States, for the southern district of Mississippi, holden at Jackson, wherein Moses Wanzer is plaintiff, and Tullius C. Tupper and John H. Rollins, late partners under the firm name of Tupper and Rollins, are defendants, to come before me at my office, in the city of New Orleans, and State aforesaid; said witness being a resident citizen of the city of New Orleans and State of Louisiana, and resides more than one hundred miles from Jackson, Mississippi, the place of the trial of said suit; said witness being about the age of 36 years, and being by me carefully examined, cautioned, and sworn on the Holy Evangelist of Almighty God to depose and state the truth, the whole truth, and nothing but the truth, deposeth and saith as follows:

That he was acting as the authorized agent of said plaintiff's business in the southern States during the year eighteen hundred and forty; that during the time he was acting as such agent as aforesaid, he had placed in his hands for collection by said plaintiff, and endorsed by him, (said Wanzer,) to the deponent, a bill of exchange of which the following is a copy:

Exchange for $2,676 $\frac{11}{100}$.

CANTON, *April* 13, 1839.

On 1st of June, 1840, after date of this first of exchange, second and third of the same tenor and date unpaid, pay to the order of Messrs. Searles & Vanderhurst twenty-six hundred and seventy-six $\frac{11}{100}$ dollars at the branch of the Commercial Bank of Natchez, at Canton, value received, and place the same to account, as advised by

Your obedient servant, MOSES WANZER,
By E. C. ESTES, *Att'y.*

To Messrs J. SILVERBERY & Co., *Canton, Mississippi.*

Accepted. J. SILVERBERY & Co.,
In liquidation— By CHAS. J. SEARLES,
Surviving partner.

Endorsed,
"SEARLES & VANDERHURST."

Pay Moses Wanzer,
TUPPER & ROLLINS.

Deponent further states, that some time in the year eighteen hundred and forty, John H. Rollins, one of the said defendants, stated to him that the said defendants were fully indemnified by J. Silverbery & Co. for their endorsement on said bill of exchange by a large amount of drafts and claims put into their hands for collection, and that they, Tupper and Rollins, were to pay said bill of exchange, and endorsed it for that purpose in consideration of such indemnity, but that a portion of said claims had turned out of no value to them, but that he did not refuse to pay the said bill on that account.

Deponent further saith, that on different occasions, and at different times, in Mississippi and Louisiana, during the year eighteen hundred and forty, said defendants promised to pay to this deponent said bill of exchange.

Deponent further saith, that said bill of exchange was especially endorsed to him for the purpose of enabling him to collect it as the agent of said plaintiff, and that he endorsed it back to said plaintiff when he found that he was unable to procure payment of the same.

JAS. P. THOMAS.

I, O. P. Jackson, judge as aforesaid, do hereby certify, that the above deposition of James P. Thomas was taken before me, and by me, at the time and place specified in the caption thereof; that the whole of said deposition was reduced to writing by myself, was carefully read by deponent, and by him approved, subscribed, and sworn to.

I further certify, that the said witness resides, and said deposition was taken, at a place distant more than one hundred miles from Jackson, Mississippi, the place of the trial of said suit; that defendants were not notified by me of the time and place of taking the said deposition, because they reside more than one hundred miles from the place of taking said deposition, and of the residence of said witness.

I further certify, that I am not of kin or counsel to either of the parties to said suit, nor am I in any way, either directly or indirectly, interested in the said suit, or the issues to be tried in the same.

I further certify, that said deposition was by me carefully sealed up, and has not been out of my possession from the taking thereof, until by me so sealed up and deposited in the post office in the city of New Orleans, State of Louisiana, and directed to the clerk of the circuit court of the United States, for the southern district of Mississippi, at Jackson, Mississippi.

In witness whereof I have hereunto affixed my seal, and subscribed my name, this 27th day of March, A. D. 1846.

O. P. JACKSON, *Judge.* [SEAL.]

And thereupon, the said defendants by their counsel offered Charles J. Searles as a witness on their behalf, to prove that the said defendants were not indemnified for their said endorsement at the date thereof, and that they were but ordinary accommodation endorsers on said bill or writing; whereupon, on the examination of said Searles, on his voire dire, by the counsel for said plaintiff, it appeared that said Searles was, at the date of said bill or writing, and of said endorsement of said defendants, (which were all of the same date, and one transaction,) a member of said firms of J. Silverbery & Co., and Searles and Vanderhurst, and that he caused the said bill or writing to be drawn, accepted, and endorsed, as it appears to be, and delivered to said Estes, the agent of said plaintiff, in payment of a debt then due from said Silverbery & Co. to said plaintiff, and that said bill or writing, so accepted and endorsed, was so received in payment by said agent; that, at the date of said bill or writing, the said defendants had in their hand a large number of claims belonging to said Silverbery & Co., and amounting to the sum of twenty or twenty-five thousand dollars; and had then incurred other liabilities, as acceptors for the accommodation of said Silverbery & Co., to the amount of three thousand dollars, and that defendants had collected from eight to ten thousand dollars of the claims so held by them for collection; that witness expected the defendants would pay the bill sued on, and their said acceptances, out of funds collected by them from said claims, but that there was no agreement or understanding between him and the defendants on the subject; that defendants, after the date of said bill or writing, had accepted other bills drawn by said Silverbery & Co., which were so accepted for the accommodation of said latter firm; and also, that, in the year 1840, said Silverbery & Co. transferred to the said defendants the said claims, and other claims then in the hands of said defendants for collection, amounting in all to about thirty-six thousand dollars, in order that defendants might pay out of moneys collected therefrom such liabilities as said defendants had incurred for the accommodation of said Silverbery & Co., and apply the balance collected, if any, to pay a creditor of said Silverbery & Co. residing in New Orleans, the defendants retaining their usual fees and commissions for collecting the same; that defendants had appropriated the funds, so collected from said claims so transferred, to the payment of their said acceptances, and of another bill due in 1839, drawn by said agent for said Wanzer, and accepted and endorsed in form as the bill sued on; which last named bill was endorsed by the defendants for the accommodation of said Silverbery & Co., and was paid by the defendants out of said funds so collected, and without any directions on the part of said Silverbery & Co. so to pay the same; and also, that many of said claims so transferred had proved wholly worthless; and that, after deducting from the amount so collected the amount so paid by the defendants, and what witness understood to be the usual attorney's fees of defendants for collection, the defendants had in their hands very little, if any, money collected on said claims, to pay on the bill or writing

sued on. That the defendants still hold some of said claims in their hands uncollected.

And thereupon, on cross examination by the counsel for said defendants, said Searles further stated, that he was a member of said firms as aforesaid, and had so as aforesaid placed said claims in the hands of said defendants for collection; but that, prior to the date of said assignment, defendants held said claims merely as the attorneys at law of said Silverbery & Co., and for the mere purpose of collection as such attorneys, and without any understanding or agreement with said defendants that they were to apply any proceeds collected on said claims to the payment of any liabilities they were or might be under for the accommodation of said Silverbery & Co. That the said sum of eight or ten thousand dollars, so collected by defendants, was collected from said claims amounting to about thirty-six thousand dollars, and so transferred as aforesaid, and was the whole sum collected to this date. That about the date of the bill or writing sued on, the said Estes, as the agent of said plaintiff, called on witness to obtain payment of a debt due from said Silverbery & Co. to said plaintiff. That the bill or writing sued on, and another for about the same amount, due in 1839, and before referred to by witness, were drawn by said Estes as such agent, and were accepted by witness as surviving partner of said Silverbery & Co., and endorsed by Searles & Vanderhurst, at the counting room of witness. That said witness and Estes then went to the office of defendants, who, on request of witness, endorsed said bills, and the same were then and there delivered by witness to said Estes in payment of said debt. That he, witness, was present at the time of said endorsement, but heard no conversation between defendants and Estes, and knew of no agreement having been made by them. Said witness also stated that there was no agreement between himself and Estes, or between himself and defendants, that the latter were to pay the bill. That he was present during the whole transaction, but cannot say whether or not he, the witness, left said office of defendants before said Estes left the same. Neither of the defendants were present when the bills were drawn and endorsed by Searles and Vanderhurst, and accepted at witness' counting room.

Whereupon, the plaintiff by his counsel objected to said Searles as a witness for said defendants on the ground that said Searles could not be heard to impeach or impair the validity or effect of said endorsement of said defendants; and also, because said Searles was interested in the event of said suit. But the court overruled said objection, and permitted said Searles to testify as a witness for said defendants; to which said decision and ruling of the court the said plaintiff by his counsel then and there excepted, and said Searles then testified on behalf of said defendants in substance as he had before testified as aforesaid on his cross examination on his voire dire; and then, upon cross examination by the counsel for said plaintiff, the said witness testified in substance as he had before testified as aforesaid, on his direct examination on his voire dire.

And thereupon, the said defendants by their counsel requested the court to rule out, and exclude from the evidence in said cause, the said bill or writing sued on, with the writings and endorsements thereon; and also said protest, so as aforesaid read in evidence for said plaintiff, on the ground that, although the said bill or writing was, as said counsel for defendants admitted it to be, an inland bill of exchange, still the plaintiff should produce a valid protest thereof; that the said protest so read was invalid, and that said plaintiff could not be permitted to read said bill or writing, and the writings and endorsements thereon, in evidence, without first producing such valid protest, even though he had offered and relied on proof to show that the said defendants had waived all demand of payment of said bill or writing, and notice of the non-payment thereof, and were not entitled to insist upon proof of such demand or notice. And thereupon, the court, for the reasons so offered, sustained said motion, and ruled out and excluded from the evidence in said cause, and withdrew from the jury, the said bill or writing, with the writings and endorsements thereon, and the said protest so before read in evidence as aforesaid; to which said decision and ruling of the court the said plaintiff by his counsel then and there excepted. And thereupon, the said defendants by their counsel requested the court to rule out, and exclude from the evidence in said cause, all the other testimony so as aforesaid offered and read for said plaintiff, including also the said evidence so given by said Searles as aforesaid on cross examination by counsel for said plaintiff, on the sole ground that said bill or writing, with the writings and endorsements thereon, and said protest, had been so ruled out and excluded, and the court then sustained said motion and on that sole ground ruled out, and excluded from the evidence in said cause, all of the said depositions and testimony so as aforesaid offered and read as evidence for said plaintiff in said cause, including said evidence of said Searles so given on his cross examination; and wholly withdrew all said testimony and evidence from said jury. Whereby the said plaintiff was wholly deprived of all benefit of the testimony and evidence so offered and read, and given for him, and was left without any evidence on his behalf before said jury. To which said decision and ruling of the court the said plaintiff by his counsel then and there excepted. All which was done and transacted as aforesaid pending the trial of said cause before said jury, empannelled to try the same. And thereupon, the said plaintiff by his counsel then and there, before said jury retired from their box, or rendered their verdict in said cause, presented this his bill of exceptions, and prayed the court to sign and seal the same, that it might be a part of the record in said cause; which is accordingly done.

S. J. GHOLSON. [SEAL.]

Therefore it is considered by the court that the said plaintiff take nothing by his said bill, but for his false clamor be in mercy, &c.; and that the said defendants, Tupper and Rollins, go hence without day, and recover of the said plaintiff their costs and charges by them about their defence in this behalf expended.